IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1943 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATGIRI SAMBHUGIRI - Petitioner(s)

Versus

TALDHWAJ JAIN SWTAMBAR - Respondent(s)

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Appearance :

MR TR MISHRA for Petitioner(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1,
MR SUNIL C PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/08/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and award passed by the Labour Court, Bhavnagar dated 29.10.2004 passed in Reference (LCB) No.8 of 1992 in

dismissing the said reference.

2. The petitioner was serving as Pujari in the Jain Temple of Shri Taldhwaja Jain Shwetamber Thirth at Talaja of District Bhavnagar. The petitioner raised the industrial dispute before the Labour Court, Bhavnagar challenging his alleged termination with effect from 21.11.1991 and the same was referred to the Labour Court, Bhavnagar for its adjudication being Reference (LCB) No.8 of 1992. It was the contention of the petitioner that he was serving as Godhi and not as Pujari and before terminating his service, the petitioner was not served with any notice, notice pay and / or the petitioner was not paid the retrenchment compensation as required under Section-25-F of the Industrial Disputes Act and therefore, there is breach of Section-25-F of the Industrial Disputes Act and therefore, it is requested to reinstate the petitioner in service. The said reference was opposed by the respondent herein – Jain temple contending interalia that the petitioner is not the “workman” as defined under the provisions of the Industrial Disputes Act and that he was

serving as Pujari and in fact, he is serving elsewhere as Pujari in another temple. Accepting the contention on behalf of the respondent, the Labour Court, Bhavnagar by its judgment and award dated 29.10.2004 dismissed the aforesaid reference by holding that the petitioner is not the “workman” and therefore, the reference is not maintainable. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Bhavnagar dated 29.10.2004 passed in Reference (LCB) No.8 / 92, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri T.R.Mishra, learned advocate appearing on behalf of the petitioner has vehemently submitted that the Labour Court, Bhavnagar has materially erred in holding that the petitioner was serving as Pujari and performing the Pooja work and consequently, he cannot be said to be “workman” as contemplated under Section-2(s) of the Industrial Disputes Act and that has resulted into miscarriage of justice. He has further submitted that the petitioner was working as

“Gothi” and not performing Pooja work and therefore, it is requested to allow the present Special Civil Application.

4. Per contra, Shri Sunil Patel, learned advocate appearing on behalf of the respondent has supported the judgment and award passed by the Labour Court, and that on appreciation of evidence, Labour Court, has specifically held that the petitioner was performing Seva Pooja and not serving as Gothi and that he cannot be said to be workman as defined under Section-2(s) of the Industrial Disputes Act and therefore, the Labour Court, Bhavnagar has rightly dismissed the reference and therefore, it is requested to dismiss the present Special Civil Application.

5. At the time of hearing of present Special Civil Application, Shri T.R.Mishra, learned advocate appearing on behalf of the petitioner has submitted that as the petitioner is suffering from cancer, some lump sum compensation be paid and therefore, this Court asked Shri Patel, learned advocate appearing

on behalf of the respondents to get further instructions. Shri Sunil Patel, learned advocate appearing on behalf of the respondent on the basis of the instructions given by his client has disputed that the petitioner is suffering from cancer. On the contrary, according to him, the petitioner is serving and performing Seva Pooja in another temple viz Bholeshwar Mahadev Temple. Considering the aforesaid fact, Shri Mishra, learned advocate appearing on behalf of the petitioner has sought time to confirm the above fact and further confirm the fact that whether in fact the petitioner is suffering from cancer or not. However, though this matter was adjourned twice, learned advocate Shri Mishra for the petitioner could not get such instructions. Under the circumstances, the submission on behalf of the respondent that the petitioner is not suffering from cancer and he is performing Seva Pooja in another temple is to be accepted. Even otherwise, the Labour Court, on appreciation of the evidence, has held that the petitioner was performing Seva Pooja and cannot be said to be “workman” as defined under Section-2(s) of the Industrial Disputes Act, 1947.

Shri Mishra, learned advocate appearing on behalf of the petitioner is not in position to show how such finding is contrary to the evidence on record and / or perverse. Under the circumstances, the finding of fact given by the Labour Court, Bhavnagar to the effect that the petitioner cannot be said to be workman under Section-2(s) of the I.D.Act, is not required to be interfered with by this Court in exercise of the powers under Articles 226 and 227 of the Constitution of India.

6. For the reasons stated hereinabove, there is no substance in the present Special Civil Application and same is required to be dismissed and is accordingly dismissed.

7. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R.Shah, J.]

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